

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:06-CR-235-D

UNITED STATES OF AMERICA)
)
 v.) ORDER
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)
 DEVARES ANTRON VICK,)
)
)
 Defendant.)

On January 28, 2008, pursuant to a plea agreement [D.E. 26], Devares Antron Vick (“Vick”) pleaded guilty to conspiracy to possess with the intent to distribute more than 5 grams of cocaine base (crack) and a quantity of cocaine in violation of 21 U.S.C. § 846. See [D.E. 26, 31, 38]. On April 22, 2008, the court held Vick’s sentencing hearing. See Sent. Tr. [D.E. 39]. At the hearing, the court adopted the facts set forth in the Presentence Investigation Report (“PSR”). See id. 5–8; Fed. R. Crim. P. 32(i)(3)(A)-(B). The court calculated Vick’s total offense level to be 31, his criminal history category to be VI, and his advisory guideline range to be 188 to 235 months’ imprisonment. See Sent. Tr. 8. The court then granted the government’s motion under U.S.S.G. § 5K1.1. See id. 13–16. After thoroughly considering all relevant factors under 18 U.S.C. § 3553(a), the court sentenced Vick to 180 months’ imprisonment on count one. See id. 20–27.

On September 22, 2008, the government moved to reduce Vick's sentence pursuant to Federal Rule of Criminal Procedure 35(b). See [D.E. 40]. On March 16, 2010, the government amended its Rule 35(b) motion. See [D.E. 48]. On March 17, 2010, the court granted the motion and reduced Vick's sentence to 144 months. See [D.E. 49].

On November 4, 2014, Vick filed a motion for a sentence reduction under 18 U.S.C. § 3582(c)(2), U.S.S.G. § 1B1.10, and Amendment 750 to the Sentencing Guidelines. See [D.E. 75].

On December 1, 2014, Vick filed a motion for a sentence reduction under 18 U.S.C. § 3582(c), U.S.S.G. § 1B1.10, and Amendment 782 to the Sentencing Guidelines. See [D.E. 77]. On January 5, 2015, Vick filed an amended motion for a sentence reduction [D.E. 78]. Vick's new advisory guideline range is 151 to 188 months' imprisonment, based on a total offense level of 29 and a criminal history category of VI. See Resentencing Report. Vick requests a 116-month sentence. See id.; [D.E. 77].

The court has discretion to reduce Vick's sentence. See, e.g., Dillon v. United States, 560 U.S. 817, 827 (2010); United States v. Cole, 618 F. App'x 178, 178–79 (4th Cir. 2015) (per curiam) (unpublished); United States v. Thomas, 546 F. App'x 225, 225–26 (4th Cir. 2013) (per curiam) (unpublished); United States v. Perez, 536 F. App'x 321, 321 (4th Cir. 2013) (per curiam) (unpublished); United States v. Smalls, 720 F.3d 193, 195–97 (4th Cir. 2013); United States v. Mann, 709 F.3d 301, 306–07 (4th Cir. 2013); United States v. Stewart, 595 F.3d 197, 200 (4th Cir. 2010). In deciding whether to reduce Vick's sentence, the court finds that Vick engaged in serious criminal behavior. See PSR ¶¶ 5–8. Vick also has a disturbing criminal history. Vick's criminal history includes convictions for possession of a handgun by a minor, possession of a stolen vehicle (three counts), possession with intent to sell and deliver cocaine, possession of a firearm by a felon (two counts), possession with intent to sell and deliver marijuana (three counts), and larceny of a motor vehicle. See id. ¶¶ 12–27. Vick also has performed poorly on supervision and essentially has no work history (when not incarcerated). See id. ¶¶ 12–27, 40–41. Nonetheless, Vick has engaged in some positive behavior while incarcerated on his federal sentence. See Resentencing Report; [D.E. 85, 86].

Having reviewed the entire record and all relevant policy statements, the court finds that Vick received the sentence that was "sufficient, but not greater than necessary" under 18 U.S.C. § 3553(a).

Further reducing Vick's sentence would threaten public safety in light of his serious criminal conduct and serious criminal history. Cf. U.S.S.G. § 1B1.10, cmt. n.1(B)(ii). Thus, the court denies Vick's motions for reduction of sentence. See, e.g., Cole, 618 F. App'x at 178–79; Thomas, 546 F. App'x at 225–26; Perez, 536 F. App'x at 321.

In sum, the court DENIES Vick's motions for reduction of sentence [D.E. 75, 78].

SO ORDERED. This 11 day of November 2016.



JAMES C. DEVER III
Chief United States District Judge